

**U.S. Environmental Protection Agency  
Region 2**

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In the Matter of:	: Approval for Risk-Based
	: Cleanup and Disposal of
Consolidated Edison Company of New York, Inc.	: Polychlorinated Biphenyl
North Storage Yard	: Remediation Waste
Astoria, New York	:
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This document is the United States Environmental Protection Agency (EPA), Region 2's (EPA Region 2) response to and approval of the request for risk-based cleanup and disposal of polychlorinated biphenyl (PCB) remediation waste. The disposal approval request by Consolidated Edison Company of New York, Inc. (Con Edison), dated October 8, 2010, addresses the portion of the North Storage Yard (said portion also referred to as the "Site") that is the subject of this approval. EPA Region 2's approval is issued in accordance with the federal regulations for PCBs promulgated pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and the regulations set forth in Part 761 of Title 40 of the Code of Federal Regulations (40 C.F.R. Part 761). In EPA Region 2, the authority to issue such approvals under 40 C.F.R. §761.61(c)(2) has been delegated to the Director of the Division of Enforcement and Compliance Assistance (DECA).

The completed application that EPA Region 2 considered in determining whether to approve Con Edison's request consists of the October 8, 2010 correspondence from Con Edison to EPA Region 2 and the documents appended therein (Application). Both the October 8, 2010 correspondence and the documents appended therein are incorporated by reference into this approval.

Based on the information provided in Con Edison's Application, EPA Region 2 has determined that implementation of the clean up actions proposed in the Application for the cleanup of the Site will not pose an unreasonable risk of injury to human health or the environment.

EPA Region 2 reviewed Con Edison's Application to determine whether the cleanup and disposal actions proposed in the Application would be protective of human health and the environment, are technically feasible and appropriate, and are consistent with and supportive of the plans of the New York State Department of Environmental Conservation (NYSDEC) for the cleanup of the Site. EPA Region 2 has also reviewed Con Edison's Application to ensure that safeguards are in place so that that long-term operation, maintenance and monitoring commitments associated with the cleanup of the Site be undertaken.

EPA Region 2 hereby issues approval for the risk-based cleanup and disposal of material contaminated with PCBs located at the North Storage Yard, subject to the terms and conditions specified herein. This approval is being issued pursuant to the authority vested in EPA Region 2 under 40 C.F.R. §761.61(c), a regulation EPA promulgated under the authority Congress granted it in TSCA. This approval constitutes an order issued under the authority of Section 6 of TSCA, 15 U.S.C. §2605, for purposes of Sections 15, 16, and 17 of TSCA, 15 U.S.C. §§2614, 2615, and 2616.

## **1. Effective Date and Review Date**

This approval shall become effective on the date the Regional Administrator of EPA Region 2 receives written notification from Con Edison, signed by a representative of the company who is authorized to speak on its behalf and to bind it, to comply with the terms and conditions of this approval. This offer may be withdrawn if EPA Region 2 does not receive, within 45 calendar days of the date of this approval letter, written notification from Con Edison of its acceptance of, and intention to comply with, the terms and conditions of this approval.

EPA Region 2 will review this approval no later than five years from its effective date. At that time, if EPA Region 2 finds that continued implementation of the remedial measures approved herein presents an unreasonable risk to human health or the environment, EPA Region 2 may modify, suspend, or revoke this approval, and EPA Region 2 may exercise any such authority in whole or in part. Alternatively, EPA Region 2 may request further information to make such a determination.

## **2. Description of the North Storage Yard and the Extent of PCB Contamination**

The portion of the North Storage Yard addressed by this approval is less than three acres in area and is within the approximately 215-acre Con Edison facility located in Astoria, New York (the entire 215-acre area hereinafter referred to as “Con Edison’s Astoria facility”). It is bordered by 17<sup>th</sup> Avenue to the north; the “Do Not Excavate Area” to the south (with the exception of a small island to the southwest) as identified in Figure 4 of the Application; 23<sup>rd</sup> Street to the west; and 25<sup>th</sup> Street to the east.

Operations specific to the Site include the management of electrical equipment and solids containing PCBs. This equipment, including transformers, is brought into the Site from service areas within and outside of the Con Edison Astoria facility, where such equipment is temporarily stored for operations within the facility or are drained and stored for subsequent off-site disposal.

Numerous environmental investigations have been conducted at the Site since the early 1990s as a result of Con Edison Astoria facility’s obligations under Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. §§6921-6939e. Effective July 7, 2008, the NYSDEC issued a renewal permit, bearing DEC permit number 2-6301-00006/00002, to Con Edison to operate, in accordance with 6 N.Y.C.R.R. Part 373, Con Edison's Astoria facility as a hazardous waste management facility (hereinafter said permit referred to as the "2008 DEC renewal

permit"). Pursuant to the 2008 DEC renewal permit and in accordance therewith, Con Edison is to complete a remediation of Con Edison's Astoria facility (any subsequent references to the "remediation of Con Edison's Astoria facility" shall mean remediation undertaken pursuant to and in accordance with the terms and conditions of the 2008 DEC renewal permit). To the extent that any requirement or provision of the 2008 DEC renewal permit is contrary to, or otherwise inconsistent with, any requirement or provision of this approval, the requirement or provision of this approval shall govern, and shall thus supersede any requirement or provision of the 2008 DEC renewal permit, with regard to any work undertaken pursuant to or in accordance with this approval that is to be performed in or carried out in connection with the Site.

The environmental investigations have shown that PCBs are present in the soil throughout the Site, in concentrations as high as 369 parts per million (ppm) dry weight. The Site contains PCB remediation waste, as defined in 40 C.F.R. §761.3, that exceeds the cleanup levels under the federal PCB regulations at 40 C.F.R. §761.61(a)(4).

### **3. Work to be Performed**

Con Edison shall timely, i.e. in accordance with any schedule set forth or referenced herein, comply with the documents that comprise Con Edison's Application, and this approval, unless EPA Region 2 provides written approval of any additional proposed modification. A request from Con Edison to modify this approval must be received by EPA Region 2 at least 60 calendar days prior to the proposed implementation of the modification. Subsequent to any such modifications, Con Edison shall timely comply with the terms and conditions of any such approved modification, and it shall continue to timely comply with the terms and conditions in this approval that are not inconsistent with any such approved modification. The provisions of this approval supersede any inconsistent provisions in Con Edison's Application.

Con Edison shall perform all remedial and monitoring work in accordance with an Engineering and Monitoring Plan approved in advance of any such work, in writing, by EPA Region 2. To the extent that Con Edison hires any sub-contractor, independent agent or other third party to perform said work, Con Edison shall be responsible to ensure any such sub-contractor, independent agent or other third party perform said work in accordance with the terms and conditions of said Engineering and Monitoring Plan. The initial Engineering and Monitoring Plan shall be submitted to EPA Region 2 no later than 30 calendar days after this approval becomes effective subject to any revisions (as necessary), and shall include an initial task-based schedule for performing the remedial and monitoring work. Once approved by EPA Region 2, the Engineering and Monitoring Plan, including the final schedule for performance of the work, shall be deemed incorporated by reference into this approval as if fully set forth in this approval. No on-site work shall be performed until EPA Region 2 has provided to Con Edison its approval of the Engineering and Monitoring Plan. Con Edison shall also maintain, for a period of five years following the cleanup and disposal (in accordance with 40 C.F.R. Part 761) of all material contaminated by PCBs that is the subject of this approval, the following records:

- 1) The “as-built” engineering drawings which provide latitude and longitude determined using differential global positioning or an equivalent method which conforms to the EPA locational data standard available online under the “Data Standards” link at <http://www.epa.gov/edr/>;
- 2) Construction related documents including engineering specifications for all purchased, manufactured, or otherwise fabricated elements associated with the cleanup of the Site;
- 3) Purchase receipts and/or certifications associated with the cleanup of the Site;
- 4) Lists or log sheets which record the identity and affiliation of Con Edison personnel, its contractors, and its consultants, responsible for off-site management, design, or procurement, and on-site cleanup and disposal; and
- 5) All records and information related to characterization, analysis (using an appropriately sensitive and selective testing method from the latest update of the document entitled: "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as SW-846, or validated equivalent, or as otherwise specified in this approval), shipping, and disposal of materials associated with the cleanup and the long term monitoring.

The cleanup of the Site shall include the following components:

- 1) Excavation of all on-site materials having PCB concentrations greater than 100 mg/kg (ppm) dry weight, and disposal of these materials off-site in accordance with the applicable PCB regulations contained in 40 C.F.R §761.61(b). Determinations regarding disposal shall be made based on “as found” dry weight concentrations prior to disturbance or excavation in accordance with 40 C.F.R. §761.61.
- 2) Sampling of the base of the excavation areas with a frequency of no less than one sample for every 625 ft<sup>2</sup> area of excavation base, to verify the removal of all material containing PCBs greater than 100 mg/kg (ppm) dry weight; and
- 3) Capping the Site with concrete meeting or exceeding the requirements provided in 40 C.F.R. §761.61(a)(7).

Con Edison’s detailed plan to implement these components must be included in the aforementioned Engineering and Monitoring Plan.

Con Edison shall provide financial surety, subject to EPA approval, sufficient for the perpetual monitoring and maintenance of the remedies that are the subject of this approval.

Documentation that this financial surety is in effect shall be provided to EPA Region 2 not less than 30 calendar days prior to the start of any work associated with this approval at the Site. In the event that Con Edison sells or leases any portion of the Site or the Site in its entirety, these financial assurance obligations shall be transferred from Con Edison to the buyer or lessee,

provided that the terms and conditions specified in Section 7 of this approval are met. If Con Edison sells or leases any portion of the Site or the Site in its entirety, but has not transferred the financial assurance obligations to such buyer or lessee, Con Edison shall remain liable for such obligations as if such sale or leasing arrangement had not been effected.

#### **4. Reporting Obligations**

Con Edison shall provide EPA Region 2 with an update of the status of the cleanup and disposal every three months following the effective date of this approval until the cleanup and disposal as directed by this approval has been completed. Within 60 calendar days of completing the cleanup and disposal and any other work necessary to satisfactorily comply with the terms and conditions of this approval, Con Edison shall submit to EPA Region 2 a Remedial Action Report (RAR) that includes the following:

- 1) A detailed description of the specific activities performed to address the PCB contamination present on the Site;
- 2) A tabular summary (with supporting laboratory documentation) of all post-excavation sampling results;
- 3) Documentation of off-site disposal of the excavated PCB remediation waste;
- 4) “As-built” figures depicting conditions at the Site after the cleanup and disposal has been completed;
- 5) An Operation & Maintenance Plan for the Site that includes the procedures to be taken in the event that intrusive work under the cap must be performed (e.g. for repair or maintenance of underground utilities); and
- 6) A certification, signed by a professional engineer licensed by the State of New York and on behalf of Con Edison, verifying that all work directed by this approval has been completed in accordance with this approval.

Con Edison shall also, by July 1 of each year, submit to EPA Region 2 an annual written summary report covering the previous reporting period (January through December of the previous year). The Annual Report pertaining to the work undertaken pursuant to this approval, shall provide the following information:

- 1) Reports of visual inspections and maintenance needed to maintain the as-built integrity of the cap;
- 2) Maintenance reports;

- 3) Information regarding any problems maintaining, or apparent breach of, any element of the cleanup; and
- 4) Documentation required under 40 C.F.R. §761.180(a).

## **5. Providing Notice**

Within 60 calendar days of completion of the cleanup and disposal work undertaken pursuant to this approval, Con Edison shall submit to EPA Region 2 a letter attesting to Con Edison's intent to comply, after completion of remediation of Con Edison's Astoria facility, with the applicable substantive requirements of 40 C.F.R. §761.61(a)(8) with regard to the on-site cleanup and disposal of PCB remediation waste, with the exception of 40 C.F.R. §761.61(a)(8)(i)(A)(I) pertaining to "use as a low occupancy area as defined in [40 C.F.R.] §761.3." Within 60 calendar days after completion of remediation of Con Edison's Astoria facility, Con Edison shall provide to EPA Region 2 documentation of its compliance with 40 C.F.R. §761.61(a)(8), with the exception of "use as a low occupancy area as defined in [40 C.F.R.] §761.3."

## **6. Inspection and Maintenance Obligations**

After the cap is constructed with concrete meeting or exceeding the requirements provided in 40 C.F.R. §761.61(a)(7), Con Edison shall visually inspect the cap at least semi-annually, and maintain it as needed. Con Edison shall also provide EPA Region 2 with a means of communicating with the owner of the Site, if other than Con Edison, regarding any and all activities at the Site which did or may result in any disruption, damage, removal, or other loss of integrity of the cap, and Con Edison shall inspect the cap within five calendar days of such notification to verify, at the least, whether any disruption, damage, destruction or other loss of integrity of the cap did occur, and, if so, to what extent. If necessary, the cap shall be repaired or replaced within 60 calendar days of the verification of damage or other loss of integrity. Until the cap is replaced or repairs are completed, Con Edison shall implement sufficient measures to isolate the affected area to prevent the migration of material containing greater than 1 mg/kg (ppm) of PCBs (dry weight) from the affected area. Within 14 calendar days of completion of repairs, Con Edison shall submit to EPA Region 2 the following information:

- 1) Notification that the cap has been breached or otherwise suffered damage or loss of integrity, including a description of the specific breach, damage, or loss; and
- 2) Certification, signed by a professional engineer licensed by the State of New York and on behalf of Con Edison, that the cap has been repaired or replaced to a condition not less than that constructed as required by this approval; and
- 3) The steps taken to prevent a repeat of the specific breach, damage or loss of integrity that occurred to the cap.

The cap shall be maintained to prevent access to the contaminated material (e.g. soil and debris) under the cap and to prevent such material from being released.

## **7. Sale of the Site**

Until such time as the work required under this approval has been completed, Con Edison shall not sell or lease any portion of the Site (or the Site in its entirety) unless Con Edison notifies EPA Region 2, in writing, no later than 30 calendar days prior to any such sale or leasing arrangement of such pending sale or lease. This notification shall include the name, address and telephone number of the proposed new owner(s) or lessee(s). In the event that Con Edison sells or leases any portion of the Site (or the Site in its entirety), it shall continue to be bound by all the terms and conditions of this approval, and be responsible to ensure the timely and satisfactory completion of all work required thereunder, unless the following occurs:

- 1) The new owner or any lessee requests, in writing, that EPA Region 2 reissue this approval to the new owner or lessee, transferring all responsibility to comply with the terms and conditions of this approval to the new owner or lessee;
- 2) EPA Region 2 reissues this approval to the new owner or any lessee, transferring all responsibility to comply with the terms and conditions of this approval to the new owner or lessee; and
- 3) The new owner or any lessee provides written notification to EPA Region 2 of its acceptance of and intention to comply with the terms and conditions of the reissued approval. EPA Region 2 may withdraw the reissued approval if it does not receive written notification from the new owner or lessee of its acceptance of, and intention to comply with, the terms and conditions of the reissued approval within 45 calendar days of the date of the reissued approval. Where EPA Region 2 has withdrawn the reissued approval, this approval, as originally issued to Con Edison, will remain in effect. In such case, Con Edison shall provide EPA Region 2, in writing, documentation that Con Edison will be afforded access to the Site, as necessary, to fulfill any and all obligations included in this approval.

In the event that the three conditions listed above are met and a new approval is issued to and accepted by a new owner or lessee, Con Edison will transfer custody of the documents required to be preserved pursuant to section “3,” above (denominated “Work to be Performed”).”

## **8. Modifications and Changes in Use**

Any proposed modification to any of the terms or conditions of this approval, whether expressly stated herein or incorporated by reference, will be presumed to be major and thus must receive prior written approval from the Director of DECA, EPA Region 2, unless Con Edison demonstrates in writing, to the satisfaction of EPA, that a proposed modification warrants being classified as minor, in which case such proposed modification may be authorized, in writing, by the Chief of the Pesticides and Toxic

Substances Branch of DECA, EPA Region 2. Whether a proposed modification is major or minor shall be a decision vested solely in the discretion of EPA Region 2, and any such decision shall be final. In making such decision, EPA Region 2 shall exercise its discretion with reason.

Con Edison shall notify EPA Region 2 in writing of any such proposed modification at least 60 calendar days prior to the anticipated date for implementation of the modification. No action shall be taken to implement any such modification unless EPA Region 2 has approved of the modification in writing. EPA Region 2 may request additional information in order to determine whether or not the modification should be approved. If a modification were to involve a change in the use of the Site, EPA Region 2 may revoke, suspend and/or modify this approval if it determines that Con Edison's proposed modification, if approved, may pose an unreasonable risk to human health or to the environment resulting from the change in use, or if EPA Region 2 does not receive information from Con Edison that it needs to assess and/or make a determination regarding such potential risk.

## **9. EPA Region 2 Entry and Inspection**

No later than 30 calendar days after this approval becomes effective, Con Edison shall provide EPA Region 2 assurance that Con Edison consents to EPA Region 2's authorized representatives entering the Site at reasonable times for any purpose authorized by Section 11 of TSCA, 15 U.S.C. §2610, including those listed below:

- 1) To inspect the Site to assess compliance with this approval and/or the federal PCB regulations;
- 2) To inspect records related to this approval and/or federal PCB regulations; and
- 3) To collect samples to assess compliance with this approval and/or the federal PCB regulations. Con Edison will be given the opportunity to split samples collected by EPA Region 2 representatives, provided this does not compromise EPA Region 2's sampling activities or the samples which EPA Region 2 collects.

Any refusal to allow any of the above actions may result in the suspension and/or revocation of this approval.

This approval, issued pursuant to 40 C.F.R. §761.61(c), is based upon Con Edison having provided EPA Region 2 with a complete and truthful disclosure of all material facts related to the Site and its Application. The misrepresentation or omission by Con Edison of any material fact in its Application or in any document associated with or supporting this approval may result in EPA Region 2's revocation, suspension and/or modification of this approval, and such other legal or equitable remedy, either civil or criminal, that EPA (or the United States on behalf of EPA) may choose to pursue under applicable law.



Con Edison's acceptance of this approval constitutes Con Edison's agreement to comply with:

- 1) All terms and conditions of this approval; and
- 2) All applicable provisions of federal, state and local law. This approval only specifies the applicable requirements under TSCA and does not cite to or make any determination regarding the requirements that may be applicable under other federal, state or local law. TSCA disposal requirements do not supercede other, more stringent, applicable federal, state or local laws, including any applicable requirements under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and its amendments. Any failure by Con Edison to comply with any condition or term of this approval shall constitute a violation of the approval, which has been issued pursuant to 40 C.F.R. § 761.61(c). Any such violation is made unlawful by Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), and may result in EPA Region 2's revocation, suspension and/or modification of this approval, and such other legal or equitable remedy that EPA Region 2 (or the United States on behalf of EPA) may choose to pursue under applicable law.

## **10. Confidential Business Information**

Information supplied to EPA is generally available to the public under the Freedom of Information Act, 5 U.S.C. § 552, and the regulations at 40 C.F.R. Part 2. As provided in Section 14(c) of TSCA, Con Edison may claim information provided to EPA Region 2 to be Confidential Business Information (CBI) provided it complies with the substantive criteria in 40 C.F.R. § 2.208. Information designated as CBI will be disclosed by EPA Region 2 only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2.

The following guidelines are used by EPA Region 2 in determining if a claim of CBI is valid in the event the claim is challenged:

- 1) The company has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures;
- 2) The information is not, and has not been, reasonably obtainable without the company's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on showing of special need in a judicial or quasi-judicial proceeding);
- 3) The information is not publicly available elsewhere; and
- 4) Disclosure of the information would cause substantial harm to the company's competitive position.

The information requested under this approval concerns the proper handling of PCB material and is not expected to involve CBI. However, in the event that information is claimed to be CBI by Con Edison, it must be clearly identified as such on the documents submitted.

## 11. Address for Correspondence with EPA Region 2

All non-CBI correspondence to be submitted to EPA Region 2 shall be sent via certified mail or next-day commercial carrier to:

James S. Haklar, Ph.D., P.E., Sr. PCB Disposal Specialist  
Pesticides and Toxic Substances Branch  
United States Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, New Jersey 08837-3679  
Telephone: (732) 906-6817 Facsimile: (732) 321-6788

The address for submission of CBI information (via certified mail or next-day commercial carrier) is as follows:

Michael Bious, Document Control Officer  
Pesticides and Toxic Substances Branch  
United States Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, New Jersey 08837-3679  
Telephone: (732) 906-6892 Facsimile: (732) 321-6788

Based on the information included in Con Edison's Application, EPA Region 2 finds that the PCB cleanup and disposal directed by this approval will not present an unreasonable risk to human health or the environment. Acceptable concentrations of PCB material remaining on-site under this approval are based on a site-specific risk determination pursuant to TSCA, and are not applicable to any other site. Notwithstanding any other provision of this approval, this approval may be revoked, suspended and/or modified after Con Edison's acceptance thereof at any time if EPA Region 2 determines that implementation of this approval may present an unreasonable risk of injury to human health or the environment. Nothing in this approval is intended or shall be construed to prejudice any right or remedy concerning the operation and maintenance of the North Storage Yard otherwise available to EPA (or the United States on behalf of EPA) under Section 6 of TSCA, 15 U.S.C. § 2605, and 40 C.F.R. Part 761, or under other applicable law. If a court of competent jurisdiction nullifies or invalidates any provision of this approval, the remainder of this approval will remain in full force and effect.

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Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

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Date